

Securities and Exchange Commission

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such responses is limited to information contained in a registration statement for the security of an investment company filed under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) or sales literature prepared by the investment company security's principal underwriter that is a registered broker-dealer;

(iii) Advertising of trust activities, if any, permitted under Section 3(a)(4)(B)(ii)(II) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(II)); or

(iv) Notifying its existing customers that it accepts orders for investment company securities in conjunction with solicitations related to its other activities concerning tax-deferred accounts; and

(6) The bank's annual compensation related to effecting transactions in securities pursuant to this exemption is less than 3% of its annual revenue.

(b) *Definitions.* For purposes of this section:

(1) The phrase *compensation related to effecting transactions in securities pursuant to this exemption* means the total annual compensation received for effecting transactions in securities pursuant to this exemption, including fees received from investment companies for distribution.

(2) The term *networking arrangement* means a contractual or other written arrangement with a broker or dealer to effect transactions in securities for the bank's customers.

(3) The term *principal underwriter* has the meaning given in Section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(29)).

(4) The term *revenue* means the total annual net interest income and non-interest income from the bank's most recent Consolidated Reports of Condition and Income (Call Reports) or any successor forms the bank is required to file by its appropriate Federal banking agency (as defined in Section 3 of the FDIA (12 U.S.C. 1813)).

(5) (i) The term *small bank* means a bank that:

(A) Had less than \$100 million in assets as of December 31 of both of the prior two calendar years; and

(B) Is not, and since December 31 of the third prior calendar year has not been, an affiliate of a bank holding

company or a financial holding company that as of December 31 of both of the prior two calendar years had consolidated assets of more than \$1 billion.

(ii) For purposes of this paragraph (b)(5) the terms *affiliate*, *bank holding company*, and *financial holding company* have the same meanings as given in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

(6) The term *tax-deferred account* means those accounts described in Sections 401(a), 403, 408, and 408A under Subchapter D and in Section 457 under Subchapter E of the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

[66 FR 27796, May 18, 2001]

§ 240.3a4-5 Exemption from the definition of "broker" for banks effecting transactions in securities in a custody account.

(a) A bank is exempt from the definition of the term "broker" under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely for effecting transactions in securities in an account for which the bank acts as custodian under Section 3(a)(4)(B)(viii) of the Act (15 U.S.C. 78c(a)(4)(B)(viii)) if:

(1) The bank does not directly or indirectly receive any compensation for effecting such transactions;

(2) Any bank employee effecting such transactions:

(i) Is not an associated person of a broker or dealer;

(ii) Primarily performs duties for the bank other than effecting transactions in securities for customers;

(iii) Does not receive compensation for such transactions related to:

(A) The size, value, or completion of any securities transaction;

(B) The amount of securities-related assets gathered; or

(C) The size or value of any customer's securities account; and

(iv) Does not receive compensation for the referral of any customer to the broker or dealer;

(3) The bank complies with Section 3(a)(4)(C) of the Act (15 U.S.C. 78c(a)(4)(C));

(4) The bank makes available to the account the securities of investment companies with similar characteristics

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that are not affiliated persons, as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3)), of the bank, if the bank makes available the securities of investment companies that are affiliated persons, as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3)); and

(5) The bank does not solicit securities transactions except through the following activities:

(i) Delivering advertising and sales literature for the security that is prepared by the registered broker-dealer that is the principal underwriter of an investment company, or prepared by an investment company that is not an affiliated person, as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3)), of the bank;

(ii) Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser of the security; provided, however, that the content of such responses is limited to information contained in a registration statement for the security filed under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) or sales literature prepared by the principal underwriter that is a registered broker-dealer;

(iii) Advertising of trust activities, if any, permitted under Section 3(a)(4)(B)(ii)(II) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(II)); and

(iv) Notifying its existing customers that it accepts orders for securities in conjunction with solicitations related to its other custody activities.

(b) For purposes of this section, the term *principal underwriter* has the meaning given in Section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(29)).

[66 FR 27796, May 18, 2001]

§ 240.3a4-6 Exemption from the definition of “broker” for banks that execute transactions in investment company securities through NSCC Mutual Fund Services.

A bank that meets the conditions for an exception or exemption from the definition of the term “broker,” except for the condition in Section 3(a)(4)(C)(i) of the Act (15 U.S.C. 78c(a)(4)(C)(i)), is exempt from such condition solely for

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transactions in investment company securities effected through the National Securities Clearing Corporation’s Mutual Fund Services.

[66 FR 27796, May 18, 2001]

§ 240.3a5-1 Exemption from the definition of “dealer” for bank engaged in riskless principal transactions.

(a) A bank is exempt from the definition of the term “dealer” solely for engaging in riskless principal transactions if the number of such riskless principal transactions during a calendar year combined with transactions in which the bank is acting as an agent for a customer pursuant to Section 3(a)(4)(B)(xi) of the Act (15 U.S.C. 78c(a)(4)(B)(xi)) during that same year do not exceed 500 transactions.

(b) For purposes of the 500-transaction limit in paragraph (a) of this section, a riskless principal transaction counts as:

(1) Two transactions if neither transaction comprising the riskless principal transaction is with a broker or dealer; or

(2) One transaction if either transaction comprising the riskless principal transaction is with a broker or dealer.

(c) For purposes of this section, the term *riskless principal transaction* means a transaction in which, after having received an order to buy from a customer, the bank purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, the bank sold the security to another person to offset a contemporaneous purchase from such customer.

[66 FR 27798, May 18, 2001]

§ 240.3a11-1 Definition of the term “equity security”.

The term *equity security* is hereby defined to include any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a